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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,544	02/24/2004	Darrin Kabel	702.336	8143

7590	11/24/2004

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EXAMINER
LIANG, REGINA

ART UNIT	PAPER NUMBER
2674	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/785,544	KABEL ET AL.
	Examiner	Art Unit	
	Regina Liang	2674	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>2/24/04</u>.

2a)☐ This action is **FINAL**.　　2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-26</u> is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-26</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>24 February 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a)☐ All　b)☐ Some * c)☐ None of:

　　1.☐ Certified copies of the priority documents have been received.

　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　Paper No(s)/Mail Date <u>6/1/04</u>.

4)☐ Interview Summary (PTO-413)
　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

  A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

  Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.   Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,703,998. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are the broader version of patented claims.

The following is an example for comparing claim 1 of this application and claim 1 of U.S. Patent No. 6,703,998.

claim 1 of this application	claim 1 of U.S. Patent No. 6,703,998.
A display comprising: a back light; a display module having an array of pixels that may be individually controlled to selectively block or pass light from the back light to create	A display comprising: a back light; a display module having an array of pixels that may be individually controlled to selectively block or pass light from the back light to create

a desired image; and	a desired image; and
a controller for adjusting the luminosity of the pixels of the display module to control the amount of light passing through the pixels to control the brightness of the image, and	a controller for **proportionally** adjusting the luminosity of the pixels of the display module to control the amount of light passing through the pixels to control the brightness of the image, and
wherein the controller is operable to adjust the luminosity of the pixels after the brightness of the back light has been adjusted to its approximate lowest level.	wherein the controller is operable to adjust the luminosity of the pixels after the brightness of the back light has been adjusted to its approximate lowest level.

As can be seen above, the only difference between claim 1 of this application and claim 1 of U.S. Patent No. 6,703,998 in that the present claim 1 does not recite "proportionally", and this change broadens claim 1 over patent claim 1 of U.S. Patent No. 6,703,998, and since the present claim 1 is in comprising format which includes any unclaimed features therefore, the present claims are not patentably distinct from the patented claims.

3.   Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,590,561. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are the broader version of patented claims.

The following is an example for comparing claim 1 of this application and claim 1 of

U.S. Patent No. 6,590,561.

claim 1 of this application	claim 1 of U.S. Patent No. 6,590,561.
A display comprising: a back light; a display module having an array of pixels that may be individually controlled to selectively block or pass light from the back light to create a desired image; and	A display comprising: a back light; a display module having an array of pixels that may be individually controlled to selectively block or pass light from the back light to create a desired image; and
a controller for adjusting the luminosity of the pixels of the display module to control the amount of light passing through the pixels to control the brightness of the image, and	a controller for **proportionally** adjusting the luminosity of the pixels of the display module to control the amount of light passing through the pixels to control the brightness of the image, and
wherein the controller is operable to adjust the luminosity of the pixels after the brightness of the back light has been adjusted to its approximate lowest level.	wherein the controller **is coupled with the user interface and** is operable to adjust the luminosity of the pixels after the brightness of the back light has been adjusted to its approximate lowest level.

As can be seen above, the only difference between claim 1 of this application and claim 1 of

U.S. Patent No. 6,590,561 in that the present claim 1 does not recite "proportionally" and "the

controller is coupled with the user interface", and this change broadens claim 1 over patent claim

1 of U.S. Patent No. 6,590,561, and since the present claim 1 is in comprising format which

includes any unclaimed features therefore, the present claims are not patentably distinct from the

patented claims.

4.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Regina Liang whose telephone number is (703) 305-4719. The

examiner can normally be reached on Monday-Friday from 9AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Richard Hjerpe, can be reached on (703) 305-4709. The fax phone number for the

organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 305-3900.

REGINA LIANG
PRIMARY EXAMINER
ART UNIT 2674

RL
11/23/04